HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION No.27077 OF 2006

Between:

V. Kamaleswara Rao

…Petitioner

AND

The Commissioner and Director,
Handlooms and Textiles Development,
Commissioner for Apparel Export Parks,
Burgula Ramakrishna Rao Buildings,
4th floor, Lower Tank Bund, Hyderabad
and another

...Respondents

: O R D E R :

Counsel for the petitioner : Shri V. Madhusudhan Rao

29th December, 2006

Per G.S.SINGHVI, C.J.

Having failed to persuade the Andhra Pradesh Administrative Tribunal at Hyderabad (for short, 'the Tribunal') to stay the proceedings of the departmental enquiry initiated against him vide charge sheet dated 01-09-2005 and issue an interim mandatory direction for his promotion to the post of Assistant Director, Industries and Commerce Department, the petitioner has filed this petition under Article 226 of the Constitution of India.

The petitioner is presently holding the post of Development Officer (Handlooms and Textiles), Warangal. While he was working as Assistant Development Officer, the petitioner was placed under suspension vide proceedings dated 9-5-1985 on the ground of his alleged involvement in leakage of Group-IV examination papers of Andhra Pradesh Public Service Commission. After five years, he was reinstated vide G.O.Ms.No.284, dated 3-5-1990 and was promoted as Development Officer (Handlooms and Textiles) on
ad hoc basis. In the meanwhile, he was prosecuted in Criminal Case No.28 of 1985 and was sentenced to simple imprisonment for one year by Additional Munsif Magistrate, Guntur, vide judgment dated 27-11-2000. As a sequel to this, he was dismissed from service vide order dated 4-12-2001. Criminal Appeal No.598 of 2000 preferred by the petitioner was dismissed by IV Additional Sessions Judge, Guntur, but he was acquitted by the High Court in Criminal Revision Case No.1419 of 2001. He then filed O.A.No.746 of 2004 for quashing the order of dismissal. The same was allowed by the Tribunal vide its order dated 16-4-2004. The Tribunal also directed the Commissioner and Director of Handlooms and Textiles Development (hereinafter referred to as 'the Commissioner') to examine the petitioner's case for regularisation of service and counting of the total period of service for

the purpose of seniority and increments. In compliance of the direction given by the Tribunal, the petitioner was reinstated vide order dated 31-7-2004, but no order was passed for regularisation of the period of suspension and restoration of seniority despite his representation dated 11-8-2004. He then filed O.A.Nos.446 and 6011 of 2005. The same were disposed of by the Tribunal vide its order dated 8-2-2006. Paragraph 13 of that order reads as under:

> "13. In view of the facts and circumstances of the case, the 1st respondent is directed to examine the case of the applicant if no departmental proceedings have been initiated for regularising the period of suspension and for increments in accordance with rules. After passing the orders as directed above, case of the applicant shall be considered for promotion in accordance with the rules and as per the directions of the Tribunal in O.A.No.746/2004 dated
> 16-4-2004. Any orders passed in this regard will be subject to the outcome of the SLP which is said to be pending before the Hon'ble Supreme Court. The above exercise shall be completed by the respondents within a period of 8 weeks from the date of receipt of a copy of this order. The O.A.446/2005 is accordingly disposed of. VMAs also stand disposed of."

In the meanwhile, the Commissioner issued proceedings dated 1-9-2005 for holding an enquiry against the petitioner under the Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1991.

After the decision of the Tribunal in O.A.Nos.446 and 6011 of 2005, the Commissioner passed order dated 21-9-2006, whereby he rejected the petitioner's claim for regularisation of the period of suspension and promotion to the post of Assistant Director on the premise that the disciplinary proceedings are pending against him.

The petitioner questioned the rejection of his claim for promotion in O.A.No.6659 of 2006. He also filed an application for interim relief. The Tribunal admitted the application, but declined interim relief by observing that during the pendency of the enquiry, the petitioner can neither be considered for promotion nor the period of

suspension can be regularised.

Sri V.Madhusudan Rao vehemently argued that in view of the petitioner's acquittal by the High Court in Criminal Revision Case No.1419 of 2001, the decision of the Commissioner to initiate departmental enquiry is liable to be declared nullity and the petitioner is entitled to have his service regularised as a matter of right. He then argued that the petitioner is entitled to be promoted as Assistant Director on the basis of his seniority and the Tribunal committed a serious error by declining to direct the Commissioner to promote him.

We have given serious thought to the arguments of the learned counsel, but have not felt persuaded to agree with him. Since the original application filed by the petitioner under Section 19 of the Administrative Tribunals Act, 1985 questioning the proceedings of departmental enquiry instituted against him on September 1, 2005 is pending before the Tribunal, we do not consider it proper to express any opinion on the merits of the charges levelled against the petitioner. Suffice it to say that till the Tribunal or any other competent adjudicatory forum nullifies the proceedings of departmental enquiry, the petitioner cannot claim promotion to the higher post as of right. If he is considered suitable by the departmental selection committee, the recommendation qua the petitioner will have to be kept in a sealed cover in accordance with the procedure laid down by the Government, which is in consonance with the law laid down by the Supreme Court in **Union of India v. K.V. Janakiraman**[1]. This being the legal position, we are unable to find any fault with the Tribunal's refusal to pass an interim direction for regularisation of the petitioner's period of suspension and for his promotion to the next higher post.

It is neither the pleaded case of the petitioner nor his counsel has argued that the order of the Tribunal is vitiated due to lack of jurisdiction or any other patent legal infirmity. Therefore, we do not find any valid ground or justification to interfere with the discretion exercised by the Tribunal not to entertain the petitioner's prayer for

interim relief. In any case, neither the Tribunal could, nor this Court will be justified in issuing a mandatory interim direction to the respondents to promote the petitioner as Assistant Director, Industries and Commerce Department even before finalisation of the departmental proceedings.

In the result, the writ petition is dismissed.

As a sequel to dismissal of the writ petition, WPMP No.34804 of 2006 filed by the petitioner for interim relief is also dismissed.

G.S. SINGHVI, C.J.

December 29, 2006

C.V. NAGARJUNA REDDY, J.

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[1] AIR 1991 SC 2010